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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE:

[REDACTED]

Office: SAN ANTONIO, TX

Date:

MAR 29 2004

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The waiver application was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States by an immigration judge under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(ii), for having attempted to procure admission into the United States by falsely claiming to be a citizen of the United States on January 8, 1997. On January 21, 1997, the applicant was removed from the United States. The applicant subsequently reentered the United States without inspection and without permission to reapply for admission. The applicant was therefore found ineligible for any form of relief under the Act pursuant to section 241(a)(5), 8 U.S.C. § 1231(a)(5). The applicant is married to a legal permanent resident of the United States and seeks the above waiver of inadmissibility in order to remain in the United States with her husband and children.

The district director concluded that the applicant is statutorily inadmissible to the United States without chance of a waiver pursuant to sections 212(a)(6)(C)(ii) and 241(a)(5) of the Act. *See* Decision of the District Director, dated April 16, 2001.

On appeal, counsel contends that the applicant committed a misrepresentation under section 212(a)(6)(C)(i) of the Act rather than a false claim to U.S. citizenship under section 212(a)(6)(C)(ii) of the Act and therefore, she is eligible for a waiver pursuant to section 212(i) of the Act. *See* Appeal from Decision April 16, 2001 Denying Mrs. Banda's Application for Waiver of Grounds of Excludability (Form I-601).

The record contains a copy and translation of the Mexican birth certificate of the applicant and copies of the Social Security Card, Texas Driver License, employment authorization card and a Mexican identification document issued to the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states in pertinent part:

(i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant attempted to enter the United States on January 8, 1997 by falsely claiming to be a United States citizen. The applicant presented a State of Texas birth certificate and a Social Security Card in the name of another person to an immigration officer at the port of entry at Hidalgo, Texas.

Counsel contends that the applicant immediately stated that she was a Mexican citizen when confronted by immigration officials and therefore, is inadmissible under section 212(a)(6)(C)(i) rather than under section 212(a)(6)(C)(ii) of the Act. *See* Appeal from Decision April 16, 2001 Denying Mrs. Banda's Application for Waiver of Grounds of Excludability (Form I-601). The AAO does not find this argument compelling as the record offers no evidence that the applicant would have retracted her false claim to U.S. citizenship had she been allowed to enter the United States uncontested.

The statutory language is clear that the waiver authorized by section 212(a)(6)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(iii), and described at section 212(i) of the Act, 8 U.S.C. § 1182(i), is not available to aliens who violate section 212(a)(6)(C)(ii), 8 U.S.C. § 1182(a)(6)(C)(ii).

Further, the record reflects that the applicant reentered the United States after her removal on January 21, 1997, without inspection and without permission to reapply for admission.

Section 241(a) states in pertinent part:

- (5) Reinstatement of removal orders against aliens illegally reentering. - If the Attorney General [Secretary] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is *not* subject to being reopened or reviewed, the alien is *not* eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry. (emphasis added)

The applicant is therefore ineligible for waiver and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.